Office Supreme Court U.S.
FILED
DEC 31 1900
JAMES H. McKENNEY,
Clerk.

No. 410.

Reply Brf. of Plaintiff in Error.

Filed Dec. 31, 1900.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1900.

No. 410.

LOUIS JACOBS,
Plaintiff in Error,
vs.
DORA MARKS,
Defendant in Error.

REPLY BRIEF OF PLAINTIFF IN ERROR.

LOUIS J. BLUM,
EDGAR C. BLUM,
ATTORNEYS FOR PLAINTIFF IN ERROR.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1900.

No. 410.

LOUIS JACOBS,
Plaintiff in Error,
vs.
DORA MARKS,
Defendant in Error.

REPLY BRIEF OF PLAINTIFF IN ERROR.

In the argument of the defendant in error, it is said that the construction of the Michigan judgment involves a question of general law. We never doubted that. In our former brief, we assumed that as an indisputable proposition and proceeded to present the question of general law. But when counsel attempt to bring this case within the line of cases holding that state decisions based upon general law are not subject to review by this Court, they overlook the authority of *Huntington* v. *Attrill*, which shows precisely to what extent that rule is applicable to the present case.

In that case the Maryland court declined to give effect to a New York judgment founded on a statutory liability, and based its refusal on the ground that the statute was a penal one. This Court held that, while the question whether or no this was a penal statute in the international

sense was one which the state court had a right to pass upon in the first instance and upon which its decision would not be subject to review if rendered in an action on the statute itself, yet as the liability had passed into a judgment which another state was asked to enforce, the general question was one which this Court would determine for itself. The Court said:

> "The case in this regard is analogous to one arising under the clause of the constitution which forbids a state to pass any law impairing the obligation of contracts, in which if the highest court of a state decides nothing but the original construction and obligation of a contract, this court has no jurisdiction to review its decision; but if the state court gives effect to a subsequent law, which is impugned as impairing the obligation of a contract, this court has power, in order to determine whether any contract has been impaired, to decide for itself what the true construction of the contract is. *New Orleans Water Works Co.* v. *Louisiana Sugar Ref. Co.*, 125 U. S., 18, 38. So if the state court, in an action to enforce the original liability under the law of another state, passes upon the nature of that liability and nothing else, this court cannot review its decision; but if the state court declines to give full faith and credit to a judgment of another state, because of its opinion as to the nature of the cause of action on which the judgment was recovered, this court, in determining whether full faith and credit have been given to that judgment, must decide for itself the nature of the original liability."

It is clear that if this Court is not without jurisdiction in this case, it has power to determine for itself the question of general law involved in the construction of the Michigan judgment. And this question of general law it has determined in the case of *U. S.* v. *Parker*. Counsel say that the language quoted by us from that case "is

obiter and not borne out by the citations on which it rests," and argue at some length that it is not a well considered case. We certainly have no better one to offer.

Defendant in error suggests that in the absence of a rejoinder the replication to the plea of satisfaction "stands confessed." We reply, first, a rejoinder reiterating the allegations of a plea is not required by any rule of pleading; second, if it were, irregularities in the pleadings are waived when parties go to trial (*Barker* v. *Green*, 48 Ill., 243); third, the subject is ignored by the courts below.

Counsel then proceed to say, in effect, that, as the record prepared under Rule 10 for the Court is not so large as the original record, the Court is bound to presume that, on the question of satisfaction, the larger record contains some evidence not found in the smaller, and on pages 9 and 15 of their brief they clearly assert or imply that there is such additional evidence. Probably these assertions are not made with any intent to misinform the Court, but they should not have been made at all, for the record, prepared under Rule 10, is in its entirety the joint work of the parties hereto, and in the acceptance of service of our designation is the following agreement, signed by all the counsel for the defendant in error: "And consent that the same, together with the additional parts of the record designated on behalf of the defendant in error herein, shall be printed by the clerk of said court and submitted to the court as the record in said cause." If, however, counsel regret having made this agreement, we are quite willing to relieve them of all responsibility in that connection, and submit the record prepared by us under Rule 10, subject to the conditions

of that rule. Upon the issue here presented, not only all the material evidence, but all the evidence that was before the state courts is now before this Court in the printed record.

Counsel say that the declaration in the Michigan case does not show that that cause involved the subject-matter of the present suit. Perhaps not; nor does it show the contrary. The declaration is not all there is to a case, and under the rules of pleading in many states, including Michigan, the plaintiff is not required to set out the nature of his claim. But if the undisputed evidence of both parties to this cause is not sufficient to establish the fact that the subject-matter of the two actions is the same, we find ample confirmation of that claim in the opinion of the Michigan court in evidence herein.

Respectfully submitted.

LOUIS J. BLUM,
EDGAR C. BLUM,
Attorneys for Plaintiff in Error.